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MONTANA LEGISLATIVE HISTORY

Chapter 180 1993

Bill H 50 S _____ Original bill & history ✓C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) 1-6	✓C	Hearing Date(s) 3-2	✓C
_____	____C	_____	____C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out _____	____C		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

4/22 SIGNED BY GOVERNOR
CHAPTER NUMBER 473
EFFECTIVE DATE: 10/01/93

HB 50 INTRODUCED BY FAGG

ALLOW MERCHANT TO STOP AND TEMPORARILY DETAIN A SUSPECTED SHOPLIFTER

12/23	INTRODUCED		
12/30	REFERRED TO JUDICIARY		
1/04	FIRST READING		
1/06	HEARING		
1/07	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/11	2ND READING PASSED AS AMENDED	75	24
1/13	3RD READING PASSED	75	23
	TRANSMITTED TO SENATE		
1/15	FIRST READING		
1/15	REFERRED TO JUDICIARY		
3/02	HEARING		
3/04	COMMITTEE REPORT—BILL CONCURRED		
3/06	2ND READING CONCURRED	46	0
3/08	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/22	SIGNED BY PRESIDENT		
3/23	TRANSMITTED TO GOVERNOR		
3/25	SIGNED BY GOVERNOR CHAPTER NUMBER 180 EFFECTIVE DATE: 10/01/93		

HB 51 INTRODUCED BY R. JOHNSON

REVISE ARCHITECTURE LICENSING LAW; DEFINITIONS AND EXEMPTIONS

BY REQUEST OF DEPARTMENT OF COMMERCE

12/23	INTRODUCED		
12/30	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
1/04	FIRST READING		
1/06	HEARING		
1/08	COMMITTEE REPORT—BILL NOT PASSED		
1/11	ADVERSE COMMITTEE REPORT ADOPTED	70	24

HB 52 INTRODUCED BY COBB

ALLOW SCHOOL DISTRICT TO EXCEED FUNDING LIMITS FOR BASIC EDUCATION

12/23 INTRODUCED
12/31 FISCAL NOTE REQUESTED
1/04 REFERRED TO SCHOOL FUNDING SELECT COMMITTEE
1/04 FIRST READING
1/11 FISCAL NOTE RECEIVED
1/12 FISCAL NOTE PRINTED
3/26 MISSED TRANSMITTAL DEADLINE

HB 53 INTRODUCED BY BENEDICT

ESTABLISH PROCEDURE FOR PART-TIME COUNTY SUPERINTENDENT OF SCHOOLS

12/23 INTRODUCED
12/30 REFERRED TO EDUCATION & CULTURAL RESOURCES
1/04 FIRST READING

HOUSE BILL NO. 50

INTRODUCED BY FAGG

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A MERCHANT TO STOP AND TEMPORARILY DETAIN A SUSPECTED SHOPLIFTER."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Temporary detention by merchant -- liability.** (1) A merchant may stop and temporarily detain a suspected shoplifter. The merchant:

(a) shall promptly inform the person that the stop is for investigation of shoplifting and that upon completion of the investigation, the person will be released or turned over to the custody of a peace officer;

(b) may demand the person's name and present or last address and question the person in a reasonable manner for the purpose of ascertaining whether or not the person is guilty of shoplifting;

(c) may take into possession any merchandise for which the purchase price has not been paid and that is in the possession of the person or has been concealed from full view; and

(d) may detain the person or request the person to remain on the premises until a peace officer arrives.

(2) A stop, detention, questioning, or recovery of merchandise under this section must be done in a reasonable manner and time. Unless evidence of concealment is obvious and apparent to the merchant, this section does not authorize a search of the detained person other than a search of the person's coat or other outer garments and any package, bag, or other container. After the purpose of a stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is arrested and turned over to the custody of a peace officer.

(3) A merchant stopping, detaining, or arresting a person on the belief that the person is shoplifting is not liable for damages to the person unless the merchant acts with malice, either actual or implied, or contrary to this section.

(4) As used in this section, the following definitions apply:

(a) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment, with the intent to deprive the merchant of all or part of the value of the merchandise. The following acts or deceptive conduct is prima facie evidence of concealment:

(i) concealing merchandise upon the person or in a container or otherwise removing merchandise from full view

while upon the premises;

(ii) removing, changing, or altering a price tag;

(iii) transferring or moving any merchandise upon the premises to obtain a lower price than the merchandise was offered for sale for by the merchant; or

(iv) abandoning or disposing of any merchandise in such a manner that the merchant will be deprived of all or part of the value of the merchandise.

(b) "Shoplifting" means the theft of any goods offered for sale by a wholesale or retail store or other mercantile establishment.

NEW SECTION. **Section 2.** Codification instruction. [Section 1] is intended to be codified as an integral part of Title 30, chapter 11, part 3, and the provisions of Title 30, chapter 11, part 3, apply to [section 1].

-End-

RPT. LCB4 FINAL COMMITTEE REPORT OF REFERRED BILLS RUN TIME 16:01
RUN DATE.... 05/03/93

CHAIRMAN--RUSS FAGG COMMITTEE--HOUSE JUDICIARY
SECRETARY-BETH MIKSCHE
NORMAL SCHEDULE => SITE: ROOM 312-1 DAYS: M,T,W,T,F TIME: 8:00 A.M.

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0024	RICE, JIM 12/30	1/08	PROHIBIT MCA COPYRIGHT -- CLARIFY MCA AS OFFICIAL VERSION OF STATUTES	DO PASS 1/8 VOTE: 18-0		1/11
HB0035	BROWN, DAVE 12/30	1/08	ELIMINATE SUFFICIENCY OF PLEADING IN PROSECUTION FOR HIDE CONCEALMENT	DO PASS 1/8 VOTE: 18-0		1/11
HB0037	BROWN, DAVE 12/30	1/08	INCREASE PENALTY FOR ALLOWING ANIMAL TO UNLAWFULLY RUN AT LARGE	DO PASS 1/8 VOTE: 18-0		1/11
HB0038	BARDANOUVE, FRANCIS 12/30	1/06	REVISE UNLAWFUL USE OF A COMPUTER	TABLED ON 01/07 VOTE: 18-0		
HB0050	FAGG, RUSSELL 12/30	1/06	MERCHANT DETENTION OF SHOPLIFTER	PASS AS AMENDED 1/6 VOTE: 15-3		1/07
HB0066	COCCHIARELLA, VICKI 12/30	1/07	GOOD FAITH PRESUMPTION FOR THOSE INVESTIGATING CHILDREN'S PROBLEMS	DO PASS 1/7 VOTE: 13-5		1/08
HB0067	COCCHIARELLA, VICKI 12/30	1/07	PROHIBIT APPOINTMENT OF CERTAIN PUBLIC EMPLOYEES AS CHILDREN'S REPS	PASS AS AMENDED 1/7 VOTE: 17-1		1/11
HB0068	FAGG, RUSSELL 12/30	1/06	CHANGE TIME FOR DEFENDANT'S PRETRIAL DISCLOSURES TO PROSECUTOR	DO PASS 1/6 VOTE: 18-0		1/06
HB0081	BACHINI, BOB 12/30	1/12	NO PAROLE OR SUPERVISED RELEASE FOR DELIBERATE HOMICIDE	TABLED ON 02/02 VOTE: 15-3		
HB0090	FISHER, MARJORIE 12/30	1/07	USE OF SERIOUS FORCE TO PREVENT CERTAIN SEX OFFENSES	TABLED ON 01/08 VOTE: 15-3		
HB0094	HARPER, HAL 1/04	1/12	REVISE DISCLOSURE OF CONFLICT OF INTEREST LAW/CONDUCT RULES FOR LEGISLATORS	PASS AS AMENDED 2/9 VOTE: 17-0		2/11

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG,** on January 6, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Dave Brown (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: Rep. Dave Brown, Vice Chair (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 38, 50, 68
Executive Action: HB 50, 68, HJR 1

HEARING ON HB 38

Opening Statement by Sponsor:

REP. FRANCIS BARDANOUVE, House District 16, Harlem, by request of the Legislative Finance Committee, discussed HB 38. HB 38

REP. BOB CLARK suggested there be a section that includes a felony rather than just a misdemeanor. **Rep. Seacat** said that in the case of a massive fraud, that clause would be covered under the criminal statutes already. His concern is more in the area of computer viruses and computer fraud. We are not involved in any massive frauds with respect to computers, and the last major fraud was the livestock helicopter situation, and in that case, the criminal statutory was a felony.

REP. CLARK was interested in the monetary costs involved, for example, destruction of complete programs and/or massive databases. **Mr. Seacat** said that they have not decided whether that would be a misdemeanor or a felony.

Closing by Sponsor:

REP. BARDANOUVE feels that if there were cases of huge magnitude, they would be referred to the Attorney General's office; however, it could be quite costly, and it could be taken care of elsewhere. We have invested literally millions of dollars in computers, and we must modernize the law so that it is up to date.

HEARING ON HB 50

Opening Statement by Sponsor:

CHAIRMAN FAGG feels strongly that merchants need the right to stop shoplifters. HB 50 is a request by the Montana Retailers Association to put into law merchant detention statutes, i.e. shoplifting statues. As people who were in the last legislative session remember, **SEN. VAN VALKENBURG** proposed a 220 page, Criminal Procedure Bill, but most people who voted on that bill did not know what, exactly, was in that bill. They assumed that because it was part of the hearing where prosecutors, defense attorneys, and others said it was a good bill, it was. It passed, and one of the provisions of that bill was taken out and will be replaced with this law. This bill is a verbatim copy of the law that was on the books two years ago when the Legislature passed that very large 220-page criminal procedure bill and took it out. The merchants feel very strongly that they need the right to stop and detain somebody they believe is shoplifting. This bill has a lot of safeguards built into it. Section 1 sets forth, very specifically, what the merchant may do, and also by reference, what he may not do. First, it says that merchants may temporarily detain a suspect up to 30 minutes until a police officer arrives. If a police officer does not arrive within 30 minutes of the initial stop, then the merchant has to let the suspect go free. A merchant has to promptly inform the person that he stops for the investigation why he is stopping him, and that upon the completion of the investigation, the person shall be released or turned over to a police officer. Second, the merchant may demand the person's name and address and request from the person in a reasonable manner to determine whether shoplifting has occurred. The merchant may take in possession

any merchandise which is found on that person and may detain the person until the police officer arrives. The stop must be done in a reasonable matter of time. On page 2, line 6, it is important to note again, "after the purpose of a stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is arrested and turned over to the custody of a peace officer."

Proponents' Testimony:

Charles Brooks, Executive Vice-President Montana Retail Association, supports HB 50. **EXHIBIT 1** Since the early 1970s, this particular language in HB 50 was in the Code. We, as retail merchants, from the last session missed the Section SB 51 which eliminated these two sections to protect the retail merchant and urge the restoration of that language to the Code. It is estimated, nationally, that shoplifting is a crime and equals over $20 billion in the retail industry, and that equates in Montana to almost $40 million. We estimate through calculations that .02 cents of every dollar that we spend equates to recovering the losses through shoplifting. In a 1990 survey from the Marketing Institute of Washington, D.C., those shoplifters apprehended in supermarkets had approximately $19 of merchandise in possession. In the merchandise field, that's approximately $25 merchandise on their person of apprehension. **Mr. Brooks** said that retailers/merchants are taking steps internally to try to control shoplifting, but they need the benefit and protection of HB 50 that retailers/merchants may stop and question a suspected shoplifter or a suspected person concealing merchandise without the threat of an omnibus lawsuit - as long as they follow the code as it is written.

REP. JOHN BOHLINGER, House District 94, Billings, offers 33 years experience as a retailer. The problem of shoplifting is not one found solely to the mass-merchandisers, not just the supermarkets or chain stores - it is also found in small, privately owned stores such as his own in Billings. Shoplifting has hovered around 1 percent of sales. For example, of $500,000 worth of sales business, expect $5,000 of losses from shoplifting. Retailers operate on thin profit margins and, often, very tight budgets. Loss of profits can range anywhere from 2-9 percent of sales. **REP. BOHLINGER** said that independent retailers and small business owners need the protection of HB 50.

Bruce Rowsell, head of loss prevention for Buttrey Food and Drug Co. EXHIBIT 2 Buttrey's 24 stores provide **Mr. Rowsell** with statistics of shoplifting and also provide him with a good indication of current shoplifting trends. These statistics also provide information in support of HB 50. For instance, only in a couple months of 1992, Buttrey employees and security apprehended 752 shoplifters. Unfortunately, that's just a fraction of the actual shoplifters who pass through Buttrey stores. In addition, Buttrey employees and security watch other suspected shoplifters steal merchandise under their coats or in their purses. These

individuals, when noticed they were being watched, will go around the corner of the store and dump the merchandise. They are subsequently stopped, and an inquiry is made as to where the merchandise is. Without passing HB 50, this type of conduct makes retailers exposed to litigation. This bill will protect the retailer from making a reasonable inquiry of a suspected shoplifter. HB 50 would not infringe on the right to civil action against the retailer that goes beyond reasonable cause. **Mr. Rowsell** is concerned that retailers can be sued for restraining suspects if there is not a law giving them this power.

Bill Stephens, Montana Food Distributors Association, said that he has worked on this subject for several sessions and believes that passing HB 50 can give lawmakers, the public and merchants a workable bill.

Riley Johnson, National Federation of Independent Businesses, said the NFIB strongly supports HB 50. **EXHIBIT 3** He stated shoplifting is a major cost of doing business and hurts the small, Main Street business far more than the large stores which can pass this cost through as a cost of doing business. The small business does not have the volume nor the capital to finance this activity.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, discussed this bill from the trial lawyers' perspective, and they are opposed to HB 50. He believes it is quite benign. **Mr. Hill** is concerned about several points regarding HB 50: 1) He would be interested in knowing whether in two intervening years litigation or problems have increased; 2) HB 50 still maintains the reasonable standard for stopping, detaining and searching a suspected shoplifter. If you're unreasonable about that, you're still subject to civil suit; and 3) **Mr. Hill's** understanding now is that merchants have the same right as private citizens to act to prevent their property from being taken.

Informational Testimony: None.

Questions From Committee Members and Responses: None.

Closing by Sponsor:

CHAIRMAN FAGG hopes that since there were no questions from the committee, that everyone understands the bill. **CHAIRMAN FAGG** made a point that merchants need to know and thoroughly understand, "the powers retailers have to arrest a person." **Mr. Brooks** said there is a section in Section 46-6-502, which is arrest by private person - the citizens arrest statute. Merchants believe that this is not adequate protection, and they still would like to see what they can and cannot do set out in this specific statute.

Rules aren't absolutely followed and work in a more general sense.

REP. CLARK asked **Mr. Conner** to comment on **Mr. Hill's** testimony. **Mr. Conner** stated that the old law prior to the 1991 changed and required that the prosecution disclose its information to the defense at the time of arraignment or at some other time as the information might come in. When the criminal procedure commission looked at that, they said, "Why should the prosecution wait until that point in time to disclose if the case is filed." Sometimes arraignments are done within a week or ten days after the case is filed in District Court, and other times, depending on the complexity of the case, it may go on for a number of weeks or months. So, rather than stall off these discovery responsibilities to the prosecution, the language should be changed.

Closing by Sponsor:

CHAIRMAN FAGG thinks HB 68 is straightforward and urges the committee's support.

EXECUTIVE ACTION ON HB 50

Motion: **REP. WHALEN MOVED HB 50 DO PASS AS AMENDED.**

Discussion: **REP. HOWARD TOOLE MOVED DO PASS AS AMENDED WITH THE FOLLOWING CHANGES:**

1. Page 1, line 9. Following: "A merchant"
Insert: "who has reason to believe that a person has committed or is in the process of committing the offense of theft"

2. Page 1, line 10.
Strike: "a suspected shoplifter"
Insert: "that person"

3. Page 2, Line 14.
Strike: "with malice, either actual or implied, or
Insert: "in a manner"

4. Page 3, line 14.
Strike: "30"
Insert: "46"
Strike: "11"
Insert: "6"
Strike: "3"
Insert: "5"

5. Page 3, Line 15.
Strike: "30", chapter 11, part 3,"
Insert: "46"

Vote: Motion carried 15 to 3 with **REPS. WYATT, BROOKE AND RUSSELL** voting no and **REP. BROWN** excused.

EXECUTIVE ACTION ON HB 68

Motion/Vote: **REP. BROOKE MOVED HB 68 DO PASS.** Motion carried unanimously with **REP. RUSSELL** being absent and **REP. BROWN** excused.

EXECUTIVE ACTION ON HJR 1

Motion: **REP. TOOLE MOVED HJR 1 DO NOT PASS.**

Discussion:

REPS. TOOLE, WHALEN, BERGMAN, RICE, CLARK AND WYATT expressed concern because this bill deals with a very large issue. People who don't have the resources in large attorney settlements, no matter how fair this sounds. It is in desperate need of tort reform. **CHAIRMAN FAGG** said there is lots of tort reform and HJR 1 is the cleanest, fairest way he could think of.

REP. RICE'S scenario is that under the resolution that was originally introduced, if an offer of judgement was made by the state of Montana, and the plaintiff lost his case and wants his original job back, for example, the plaintiff still pays all of Montana's attorney fees. The attorney would have to limit his fees so that the plaintiff could afford the attorney fees. **CHAIRMAN FAGG** said that **REP. RICE** has a point and that under this situation, the Supreme Court would consider amount of the attorneys' fees and whether they were reasonable.

REP. TOOLE said that this is a very radical bill and would have preferred that had any insurance companies testified during the hearing, the committee members could have asked for their viewpoint.

Motion/Vote: **MOTION WAS MADE TO TABLE HJR 1.** Motion carried 9 to 8.

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 1-6-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	X		
Rep. Randy Vogel, Vice-Chair	X		
Rep. Dave Brown, Vice-Chair			X
Rep. Jodi Bird	X		
Rep. Ellen Bergman	X		
Rep. Vivian Brooke	X		
Rep. Bob Clark	X		
Rep. Duane Grimes	X		
Rep. Scott McCulloch	X		
Rep. Jim Rice	X		
Rep. Angela Russell	X		
Rep. Tim Sayles	X		
Rep. Liz Smith	X		
Rep. Bill Tash	X		
Rep. Howard Toole	X		
Rep. Tim Whalen	X		
Rep. Karyl Winslow	X		
Rep. Diana Wyatt	X		

HR:1993
wp.rollcall.man
CS-09

HOUSE STANDING COMMITTEE REPORT

January 6, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 50 (first reading copy -- white) do pass as amended .

Signed: _____

Russ Fagg, Chair

And, that such amendments read:

1. Page 1, line 9.
Following: "A merchant"
Insert: "who has reason to believe that a person has committed or is in the process of committing the offense of theft"

2. Page 1, line 10.
Strike: "a suspected shoplifter"
Insert: "that person"

3. Page 2, line 14.
Strike: "with malice, either actual or implied, or"
Insert: "in a manner"

4. Page 3, line 14.
Strike: "30"
Insert: "46"
Strike: "11"
Insert: "6"
Strike: "3"
Insert: "5"

5. Page 3, line 15.
Strike: "30, chapter 11, part 3,"
Insert: "46"

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE Jan. 6, 1993 BILL NO. HB 50 NUMBER 18

MOTION: HB 50 to DO Pass as amended 15-4

Rep. Brown Excused

NAME	AYE	NO
Rep. Russ Fagg, Chairman	X	
Rep. Randy Vogel, Vice-Chair	X	
Rep. Dave Brown, Vice-Chair		
Rep. Jodi Bird	X	
Rep. Ellen Bergman	X	
Rep. Vivian Brooke		X
Rep. Bob Clark	X	
Rep. Duane Grimes	X	
Rep. Scott McCulloch	X	
Rep. Jim Rice	X	
Rep. Angela Russell		X
Rep. Tim Sayles	X	
Rep. Liz Smith	X	
Rep. Bill Tash	X	
Rep. Howard Toole	X	
Rep. Tim Whalen	X	
Rep. Karyl Winslow	X	
Rep. Diana Wyatt		X

EXHIBIT 1
DATE 1-6-93
HB 50

Executive Office
318 N. Last Chance Gulch
P.O. Box 440
Helena, MT 59624
Phone (406) 442-3388

TESTIMONY
JANUARY 6, 1993
8:00 A.M.
ROOM 312-1

HOUSE BILL 50

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

FOR THE RECORD, I AM CHARLES BROOKS, EXECUTIVE VICE PRESIDENT OF THE MONTANA RETAIL ASSOCIATION AND ITS AFFILIATES, MONTANA HARDWARE AND IMPLEMENT DEALERS AND THE MONTANA TIRE DEALERS ASSOCIATIONS. I AM HERE TODAY TO URGE YOUR SUPPORT AND PASSAGE OF HOUSE BILL NO. 50.

SHOPLIFTING IS A CRIME - SHOPLIFTING IS STEALING.

SHOPLIFTING HAS INCREASED 33% OVER THE LAST FOUR YEARS - MAKING IT ONE OF THE FASTEST GROWING CRIMES IN THE NATION.

NATIONALLY IT COST MERCHANTS OVER 20 BILLION DOLLARS ANNUALLY, WHICH INTERPRETS TO APPROXIMATELY 40 MILLION IN LOSSES EACH YEAR FOR MONTANA MERCHANTS.

45% TO 70% OF A STORE'S MERCHANDISE LOSSES, ARE DERIVED FROM SHOPLIFTING. THIS CRIMINAL ACTIVITIES ADDS APPROXIMATELY 2 CENTS TO EVERY DOLLAR OF RETAIL COSTS. NINE IN EVERY TEN SHOPLIFTERS HAVE THE MONEY OR A CREDIT CARD IN THEIR POCKET TO PAY FOR THE ITEMS THEY STEAL.

THE 1992 SURVEY BY FOOD MARKETING INSTITUTES'S OF SHOPLIFTING LOSSES IN THE SUPER MARKET INDUSTRIES REVEALS AN AVERAGE OF $19.10 PER APPREHENSION. THE NATIONAL RETAIL FEDERATION ESTIMATES IN THE GENERAL MERCHANDISE FIELD THE AMOUNT TO BE $25.00 PER APPREHENSION.

OUR MEMBERS FEEL IT IS NECESSARY THAT THE MERCHANTS RIGHTS WHICH HAD BEEN A PART OF THE MONTANA CODE FOR MANY YEARS AND REMOVED IN 1991 WITH THE ENACTMENT OF SB 51 SHOULD BE RESTORED.

WE RECOGNIZE THAT MERCHANDISING METHODS TODAY MAKES IT EASIER FOR SOMEONE TO SHOPLIFT. HOWEVER, MAKING IT EASIER DOES NOT ALTER THE SERIOUSNESS OF THE CRIME. YOU WILL BE HEARING FROM SEVERAL INDIVIDUALS IN THE RETAIL FIELD THAT FACE THIS PROBLEM ON A DAILY BASIS. THEY ARE WORKING VERY HARD TO CONTROL THIS TYPE OF CRIMINAL ACTIVITY AND NEED THIS LEGISLATION TO PROTECT THEIR RIGHT TO STOP AND QUESTION INDIVIDUALS WHO ARE SUSPECTED OF STEALING OR CONCEALING MERCHANDISE.

I URGE YOUR TO GIVE HB 50 A DO PASS VOTE. THANK YOU FOR THE OPPORTUNITY TO PRESENT THIS TESTIMONY.

EXHIBIT 6
DATE 1-6-93
HB 50

Buttrey
Food & Drug

P.O. BOX 5008 ■ PHONE 406/761-3401 ■ 601—6th ST. S.W., GREAT FALLS, MT 59403

January 6, 1993

Mr. Chairman and Members of the Committee,

My name Bruce Rowsell, and I'm here in support of House Bill Number 50.

As the head of Loss Prevention for Buttrey Food and Drug Company, I collect and review shoplifting statistics based on our company's experience. Forty-four stores submit data for the statistics, which provide a good indication of the current shoplifting trend.

These statistics also provide information significant to the support of House Bill Number 50. During the first eleven months of 1992, Buttrey employees and security apprehended 752 shoplifters. Unfortunately, this is just a fraction of the actual number of shoplifters that pass through Buttrey stores. Buttrey people also observed several other suspected shoplifters concealing merchandise under their clothing or in a purse. For one reason or another, the suspects discreetly dumped the items when they were able to evade detection of our people. They were subsequently stopped and an inquiry made about the product they concealed. Without the passing of this bill, this type of cunning by a shoplifter makes retailers exposed to civil litigation.

This bill would protect the retailer in making a reasonable inquiry of a suspected shoplifter when probable cause exists. It would not infringe upon the right to civil action against a retailer who goes beyond a reasonable inquiry.

It may be argued, that civil action could not be won against a retailer who follows all the laws and procedures we now have. However, civil actions brought against a retailer are expensive to defend, and expensive for the judicial system. Without the law, retailers find it less expensive to pay the shoplifter off, even though the case could easily be won by going to court. This makes crime pay at the expense of the retailer, and the honest customer.

The vast majority, if not all retail establishments in this state, would only make a stop when they are reasonably sure that a crime has been committed. We are there to serve our customers, not to make random or inappropriate stops. But, we need to be in position to protect our assets without fear of experiencing further losses due to litigation brought about by dishonest people.

I am here to express the message that Buttrey Food and Drug Company supports the passing of House Bill Number 50.

Thank you.

EXHIBIT 2
DATE 1-6-93
SB 50

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME Riley Johnson **BILL NO.** HB 50

ADDRESS 491 So. Park Ave, Helena **DATE** 1/6/93

WHOM DO YOU REPRESENT? NFIB

SUPPORT X **OPPOSE** _____ **AMEND** _____

COMMENTS: The National Federation of Independent Business strongly supports HB 50. Shoplifting is a major cost of doing business and hurts the small, main street business far more than the larger "mega" stores which can pass this cost through as a cost of doing business. The small business does not have the volume nor the capital to finance this activity.

HR:1991
CS15

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB-50

DATE 1-6-93 SPONSOR(S) Russell Fagg

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Charles R Brooks Helena	Montana Rail Link	HB-50	
Lloyd Knudsen	MT Rural Ed. Assn.	HB50	
David Owen	MT Chamber of Commerce	HB 50	
Ken Hughes	Billings Area Chamber Coalition	HB50	
Russell B Hill Helena	MTLA		✓
John L. Bohlinger	HD 94	X	
Bill Olson	Self	✓	
Bruce Rowsell	Buttrey	✓	
[illegible]	[illegible]	✓	
Riley Johnson	NFIB	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

RPT. LCB4 FINAL COMMITTEE REPORT OF REFERRED BILLS RUN TIME 16:12
RUN DATE.... 05/05/93

CHAIRMAN--BILL YELLOWTAIL COMMITTEE--SENATE JUDICIARY
SECRETARY-REBECCA COURT
NORMAL SCHEDULE => SITE: ROOM 325 DAYS: M,T,W,T,F TIME: 10:00 A.M.

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE		REREFERRED	DATE READ
HB0022	MENAHAN, RED		REVISE APPOINTMENT AUTHORITY FOR NCCUSL				
	1/08	3/02		CONCUR	3-2		3/03
HB0024	RICE, JIM		PROHIBIT MCA COPYRIGHT -- CLARIFY MCA AS OFFICIAL VERSION OF STATUTES				
	1/15	3/02		CONCUR	3-2		3/03
HB0035	BROWN, DAVE		ELIMINATE SUFFICIENCY OF PLEADING IN PROSECUTION FOR HIDE CONCEALMENT				
	1/15	3/02		CONCUR	3-2		3/03
HB0050	FAGG, RUSSELL		MERCHANT DETENTION OF SHOPLIFTER				
	1/15	3/02		CONCUR	3-2		3/04
HB0063	KELLER, VERNON		ELIMINATE COUNTY RAFFLE PERMIT FOR RELIGIOUS GROUPS AND NONPROFIT AGENCIES				
	1/20	1/28		CONCUR	1-28		1/29
HB0066	COCCHIARELLA, VICKI		GOOD FAITH PRESUMPTION FOR THOSE INVESTIGATING CHILDREN'S PROBLEMS				
	1/14	1/29		CONCUR	3-4		3/05
HB0067	COCCHIARELLA, VICKI		PROHIBIT APPOINTMENT OF CERTAIN PUBLIC EMPLOYEES AS CHILDREN'S REPS				
	1/16	1/29		CONCUR AS AMENDED	3-4		3/05
HB0068	FAGG, RUSSELL		CHANGE TIME FOR DEFENDANT'S PRETRIAL DISCLOSURES TO PROSECUTOR				
	1/13	3/04		CONCUR	3-4		3/05
HB0121	FAGG, RUSSELL		DAM SAFETY -- LIABILITY REVISIONS				
	2/16	3/05	3/17	CONCUR AS AMENDED	3-27		3/30
HB0123	JOHNSON, JOHN		REVISE PADDLEFISH ROE DONATION PROGRAM AND EXTEND PROGRAM'S TERMINATION DATE				
	2/04					Senate Fish + Games 2/8	
HB0127	PECK, RAY		ALLOW HEARSAY IN TROUBLED CHILD TEMPORARY INVESTIGATIVE HEARING				
	1/29	2/12		CONCUR	3-2		3/03

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 2, 1993, at 10:06 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Towe

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 22
	HB 24
	HB 35
	HB 50
Executive Action:	HB 22
	HB 24
	HB 35
	HB 50
	HB 127

HEARING ON HB 35

Opening Statement by Sponsor:
Representative Dave Brown, District 72, is carrying SB 35 on behalf of the Department of Livestock. Rep. Brown said SB 35

Walk said HB 24 is a good piece of legislation that would take care of current and future problems. Mr. Walk feels the clarification in the bill, as to who owns the code, is a significant part of HB 24.

Greg Petesch, Code Commissioner, told the Committee that the legislative council sponsored a bill last session, which was tabled, that would have clarified the procedure to be followed in giving permission to use codified material. The bill was opposed by several individuals on the basis that they did not feel that the state code should be copyrighted. Mr. Petesch said he worked with the opponents of that bill to come up with HB 24. Mr. Petesch said if someone wanted to compile an unauthorized version of the codes there would be no objection. A provision in HB 24 maintains that Montana Code Annotated would be the official version of codes to be used in public documents. That provision would provide protection for the state.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:
Senator Blaylock asked Greg Petesch if anyone could copyright the codes. Mr. Petesch said yes. Mr. Petesch said it would be difficult to produce a more timely and cheaper version of the codes that are presently produced by the State of Montana.

Closing by Sponsor:
Representative Rice closed.

HEARING ON HB 50

Opening Statement by Sponsor:
Representative Fagg, District 89, said the Montana Retailers Association approached him about sponsoring HB 50. Rep. Fagg told the Committee why HB 50 was being introduced. Last session Senator Van Valkenburg introduced a Criminal Procedure Bill that the county attorneys, defense attorneys, and judges agreed upon. Part of the bill took out the Merchant Detention Statute. There were two statutes that were deleted, with the introduction of the Criminal Procedure Bill, regarding shoplifting and detaining someone suspected of shoplifting. Rep. Fagg said for the last two years, retailers have been concerned about not having the ability to detain someone who is suspected of shoplifting. Retailers believe detaining someone under present law could open them up to civil liability, so they requested the law that was deleted in the previous legislative session be reintroduced. Rep. Fagg said the wording would be the same, but it would be combined in one section. Rep. Fagg said the main concern of the

opponents would be the protection of the customers.

Proponents' Testimony:
Charles Brook, Montana Retailers Association, said the section of the code that was eliminated in the last session was on the books since the early 1970's. Mr. Brook said the problem with section 46-6-501, part 2, is that a person must immediately notify a peace officer. There are many times when it is not in the best interest of the person who is suspected of shoplifting, to immediately call a peace officer. For instance, a senior citizen who may be disoriented, or a young child. Mr. Brooke said according to the code, if a peace officer is not immediately notified, the retailer could be open to a lawsuit. Mr. Brooke said shoplifting is a nationwide crime. Nationwide, merchants are losing an estimated $20 billion a year in merchandise. Montana loses an estimated $40 million in merchandise a year. Mr. Brooke told the Committee that shoplifting increases the price on merchandise. The Montana Retailers Association is interested in this section of the code being restored because it protects the right of individuals and the rights of the merchant to detain.

David Owen, Montana Chamber of Commerce, said following someone out of a store that is suspected of shoplifting, is a burden to store owners and staff. Mr. Owen support HB 50, but feels there should be reasonable restrictions placed on store owners regarding the detainment of an individual.

Bill Stevens, Montana Food Distributors Association, supports HB 50. Mr. Stevens said retail grocers have quit detaining shoplifters for fear of being sued. Mr. Stevens urged a DO PASS on HB 50.

Opponents' Testimony:
Russell Hill, Montana Trial Lawyers Association, said they stand in friendly opposition to HB 50. HB 50 has many protections in the bill. Mr. Hill said his understanding was that the deletion of the language was intentional because the revisors of the code did not see a reason why merchants needed additional power to stop and detain people. Mr. Hill said the concern of shopkeepers, who may not want to immediately call police, is a genuine concern. Mr. Hill pointed out that in terms of the fear of liability, HB 50 may expose merchants to an additional degree of liability, page 2, line 10 through 13. HB 50 treats merchants differently than all other people in terms of detention and search of suspected shoplifters. The concern of the Montana Trial Lawyers Association is that HB 50 may send wrong messages to merchants, by giving them a false sense of immunity. Mr. Hill pointed out good provisions in HB 50. Page 1, line 10, is a good provision because the merchant has to have reason to believe a person is shoplifting. Page 2, lines 4 and 5, requires that detention has to be done in a reasonable manner and time. The Montana Trial Lawyers Association believe those are basic

principles of current law.

Questions From Committee Members and Responses:
Senator Doherty asked Rep. Fagg about page 2, line 7 through 9. Rep. Fagg said a merchant would not be able to search inside someone's shirt or down their pants.

Senator Blaylock asked Mr. Brook if HB 50 would cause a decrease in shoplifting. Mr. Brook said with the passage of HB 50 there would be a decline in shoplifting. Mr. Brook told the Committee that making sure judges follow the codes and getting substantial penalties for shoplifters would be the greatest deterrent to shoplifting.

Closing by Sponsor:
Rep. Fagg said the original law was on the books for almost 20 years and it seemed to worked very well. Shoplifting is occurring in Montana and is a problem for the merchants as well as customers because prices increase. The policy behind HB 50 is a good one. HB 50 allows a merchant to detain a person suspected of shoplifting inside the store. Rep. Fagg said the protections that Russell Hill touched on are significant for HB 50. The two main protections are on page 2 of HB 50. Line 4 says, "and anything done under the section must be done in a reasonable manner and time." The most significant protection is on line 9 through 12. It says "after the purpose of the stop has been accomplished or 30 minutes has elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is stopped by the police." The merchant would have 30 minutes at the most to get the police there if they think someone has shoplifted. Rep. Fagg said presently merchants immediately call the police which could be detrimental to a person who has not really shoplifted. Rep. Fagg said that is a waste of resources for the police and an embarrassment for the person who had not actually shoplifted. HB 50 is to putting the law back on the books allowing merchants to detain and search someone in a reasonable time and manner. If the person shoplifted police would be called, if the person has not shoplifted they would be released. Rep. Fagg said it would be in the publics best interest for merchants to be able to make those stops. The House Judiciary Committee amended HB 50 to make the bill more reasonable. A merchant was defined on page one of HB 50. The language on page 2, line 17, "malicious or actual" was deleted because there was concern that a jury would be confused by the language. Rep. Fagg asked for DO PASS recommendation for HB 50.

EXECUTIVE ACTION ON HB 24

Motion/Vote:
Senator Blaylock moved HB 24 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

22.

EXECUTIVE ACTION ON HB 22

Motion/Vote:
Senator Blaylock moved HB 22 BE CONCURRED IN. The motion CARRIED with Senator Crippen voting NO.

EXECUTIVE ACTION ON HB 50

Motion:
Senator Blaylock moved HB 50 BE CONCURRED IN.

Discussion:
Senator Halligan said merchants do not stop a person suspected of shoplifting inside a store because they have yet to purchase the item. It is prima facie evidence of concealment if a person is concealing merchandise upon a person, in a container, or removing merchandise from full view upon the premises. Senator Halligan said there would be plenty of opportunity for liability on part a store owner. Store owners would have to have a high standard to make sure they are acting in a reasonable manner when someone is inside the store and suspected of shoplifting.

Vote:
The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 127

Motion/Vote:
Senator Halligan moved HB 127 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

ROLL CALL

SENATE COMMITTEE Judiciary DATE 3-2-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe			X
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

F08

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

March 2, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 50 (first reading copy -- blue), respectfully report that House Bill No. 50 be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

Amd. Coord.
Sec. of Senate

Sen. Blaylock
Senator Carrying Bill

471142SC.Sma

DATE 3-2-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: H.B. 22 (Mercer) H.B. 24 (Rice)
H.B. 35 - Brown H.B. 50 - Foss

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Bill Stevens	MT Food Dist Assn	HB-50	X	
Charles R. Brooks	MT - Rep. L Assoc	HB50	X	
Chuck Wall	MT Newspapers	HB 24	X	
David Owen	MT Chamber of Commerce	HB 50	✓	
Russell B Hill	MT Trial Lawyers	HB50		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10